STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-358

December 2, 2003

PUBLIC UTILITIES COMMISSON
Investigation of Compliance of Verizon Maine with Amended 35-A M.R.S.A. § 7101-B

ORDER ESTABLISHING SCHEDULE FOR ACCESS RATE REDUCTIONS; NOTICE OF FURTHER OPPORTUNITY TO COMMENT

WELCH, Chairman; REISHUS and DIAMOND, Commissioners

I. SUMMARY

In this Order we decide that Verizon Maine shall reduce its intrastate access rates to the level of its interstate access rates that were in effect on January 1, 2003 in two equal steps: on June 1, 2004 and May 31, 2005. We find that these reductions will satisfy the requirements of 35-A M.R.S.A. § 7101-B, as amended by P.L. 2003, Ch. 101, effective May 2, 2003. We do not decide at this time the other major issue in this case, whether Verizon will be permitted to recover in local rates lost revenues attributable to the access rate reductions. We will decide that issue later in this proceeding by determining whether this change in revenues constitutes an "exogenous change," pursuant to the criteria established in the alternative form of regulation (AFOR) for Verizon. We invite further comment on that issue.

II. BACKGROUND

35-A M.R.S.A. § 7101-B (the "access parity statute") requires access providers, i.e., local exchange carriers (LECs), to reduce intrastate access rates to interstate levels. The statute was amended (effective May 2, 2003) to state that by May 31, 2005, LECs must reduce their intrastate access rates to the level of interstate access rates that were in effect on January 1, 2003. Previously the statute required LECs to reduce their intrastate access rates to (or below) interstate levels on May 30, 1999 and to reestablish that parity "every 2 years." In 1999 and 2001, Verizon reduced its intrastate access rates to comply with the requirements of the former Subsection 2 of Section 7101-B, which required parity between the intrastate and interstate access rates of all LECS.[1]

On May 28, 2003, we opened an investigation to determine the timing for Verizon to comply with amended 35-A M.R.S.A. § 7101-B. The Notice of Investigation described the statutory change and the issues in this case and required Verizon to file a plan for implementation. Verizon's filed its response and plan, with supporting argument, on June 27, 2003. Verizon proposed that it should not reduce access rates

[1] The Company also reduced access rates by 20% in 1997 pursuant to a requirement contained in Chapter 280, § 8(I).

until the final date allowable under the amended statute, May 31, 2005. A July 9, 2003 procedural order provided notice of an opportunity to intervene and to comment. AT&T, MCI, Qwest, Sprint, the Telephone Association of Maine (TAM) and the Public Advocate intervened. AT&T, MCI and Qwest filed comments. Verizon filed reply comments.

III. PARTIES' ARGUMENTS

Verizon argued in its initial filing that it should not be required to make any further access rate reductions until May 31, 2005, the final deadline under the amended statute. Verizon contends that the Commission should first allow the independent telephone companies (ITCs) to "catch up" with Verizon's prior access rate reductions (1999 and 2001). Verizon claims that the prior reductions have resulted in "dramatic" reductions in retail toll rates for all interexchange customers in Maine, but that only Verizon's local customers have borne the burden of having to pay offsetting increases in local rates. Verizon argues that it is unfair to make Verizon customers pay for USF (which, at least temporarily, supports rates for ITC customers that are below Verizon rates) *and* face a further local rate increase. Verizon points out that the chairpersons of the Utilities &Energy Committee of the Legislature wrote a letter to the Commission suggesting that the Commission "develop appropriate phase-in schedules which ensure fairness to all customers without causing rate shock."

AT&T maintains that present access rates are not cost-justified; that there is no competition in the access market; that Verizon, as a monopoly access provider, continues to reap "windfall profits" from access; and that the "high" access rates harm the Maine economy.[2]

MCI argues that Verizon did not submit a plan at all. MCI also asserts that Verizon's "catch-up" argument is "irrelevant" to the two considerations stated in the part of the statute (subsection 2) that grants the Commission's discretion to establish schedules for compliance and guides the exercise of that discretion. MCI claims that Verizon does not present an argument that addresses the two "disadvantages" that must be balanced under the introductory paragraph to subsection 2; neither, however, does MCI. MCI points out that, under subsection 2(B), access rate reductions *must* be phased in only if the decrease would result in a local rate increase of greater than 50%.

Qwest argues that intrastate access rates should be reduced to the interstate level immediately, not in two years as Verizon requests. Qwest says that it has the perspective of an interexchange carrier (IXC), a competitive local exchange carrier (CLEC) and an "internet backbone provider." Like MCI, Qwest points out that Verizon fails to address the two "disadvantages" that § 7101-B(2) (introductory paragraph) requires the Commission to consider. Also like MCI, Qwest also does not itself present any argument that attempts to weigh these two factors. Qwest claims Verizon has the

[2] AT&T presents several arguments concerning whether Verizon should be allowed to increase its local rates to offset access revenues losses. We are not deciding that issue in this order and therefore will not summarize those arguments here.

burden of proof on this issue. According to Qwest, the Commission should reject Verizon's plan and should require immediate access reductions. Qwest asserts that sound public policy reasons justify not delaying the next round of access reductions, and that Verizon's arguments concerning other factors such as BSCA and rate group consolidation are irrelevant or immaterial.

Qwest argues that reducing access rates and increasing other rates (presumably basic exchange rates) on a revenue-neutral and competitively-neutral basis makes sound economic policy and will encourage competition. In-state access rates that approximate the interstate rates will close the jurisdictional gap and result in a pro-competitive intercarrier compensation scheme, as envisioned by the FCC in its CALLS and MAG plans. Instate and interstates rates at the same level will also eliminate rate arbitrage, because it will reduce the need for regulatory intervention, and instead, will rationalize the intercarrier rate structure.

Qwest further argues that many IXCs charge the same intrastate toll rates in all states, rather than customize their rates based on access rate variations among the states in which they operate. Accepting lower contributions in states that have higher access rates is a cost of business that carriers must ultimately pass along to their customers. Carriers pass uneconomic costs to their customers in hidden ways, so that the consumer has a difficult time making sound economic choices among local and long distance providers. According to Qwest , eliminating the difference between instate and interstate access rates will eliminate uneconomic costs from the carrier's calculation of its prices and will ensure that rates more closely reflect costs.

In response, Verizon argues that the Commission should not immediately reduce access rates even though a reduction of the full amount at this time would not result in an increase to local rates of 50 percent, the threshold in subsection 2(B) that requires a phase-in of access rate reductions. Verizon argues that the Commission still has discretion under the introductory paragraph of subsection 2 to phase in access reductions.

IV. DISCUSSION AND DECISION: SCHEDULE FOR DECREASING ACCESS RATES

Subsection 2 of amended 35-A M.R.S.A. § 7101-B states:

> **2. Access rates.** After any decrease of interstate access rates by the Federal Government, the commission shall consider corresponding reductions in intrastate access rates, taking into account both the disadvantages to customers of intrastate access rates that exceed interstate access rates and the disadvantages to customers of increases in rates for local telephone service that may result from reductions in intrastate access rates.

> A. By May 31, 2005, the commission shall ensure that intrastate access rates are equal to interstate access rates established by the Federal Communications Commission as of January 1, 2003.
> B. If achieving the result required under paragraph A would result in an increase of more than 50% in the price of local telephone service, whether as a result of an increase in local service rates or an increase in universal service fund collections, the commission shall:
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> (1) Phase in intrastate access rate reductions through stepped reductions so as to produce as smooth a transition as possible; and
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> (2) To the maximum extent possible, keep increases in the price of local telephone service to no more than 50% for each stepped reduction in the intrastate access rate.
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> C. If interstate access rates are reduced by the Federal Communications Commission below the rates as of January 1, 2003, the commission may further require reductions in intrastate access rates beyond what is required under paragraph A, except that, within any 2-year period, the commission may not require such further access rate reduction if the result will be an increase of more than 50% in local service rates or an increase of more than 50% in the collection rate for the state universal service fund.[3]

Subsection 2(A) is a mandate that "by" May 31, 2005, the Commission must ensure that a LEC reduce its intrastate access rates to the level of its interstate rates in effect on January 1, 2003. That provision grants us discretion as to the timing, but not as to the ultimate result. The discretion is subject to the limitations contained in paragraph B, but those limitations are not applicable to this case because Verizon would need to increase its local rates by far less than 50 percent for it to reduce its present intrastate access rates to January 1, 2003 interstate levels.

It is not clear that the introductory paragraph of subsection 2 has any applicability to the issue before us in this case. A comparison between the "disadvantages" of access rates that exceed interstate rates and the "disadvantage" of higher local rates is pointless when a certain level of intrastate access rates is mandated by paragraph A. We conclude that the exercise of comparing "disadvantages" described in the introductory paragraph is intended to apply to a decision under paragraph C, which would occur only after a LEC has reduced its intrastate access rates to the level of

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[3] Although we include paragraph C in the quotation above, we do so because of our discussion below about its connection to the introductory paragraph of subsection 2. Paragraph C is not relevant to the issue we consider here. Effective in July 2003, the FCC in fact made reductions below the rates as of January 1, 2003. We cannot consider "further" reductions in intrastate rates, however, until after a LEC has reduced its rates to the January 1, 2003 level required by Paragraph A.

January 1, 2003 interstate rates. As noted above, MCI argued that Verizon's "catch-up" argument was "irrelevant" to the matter of comparing the two "disadvantages" in the introductory paragraph of subsection 2. Both MCI and Qwest claimed that Verizon failed to present any argument addressing the two disadvantages. In light of our decision here, we do not believe argument about the disadvantages would be relevant.[4] Nevertheless, we apply similar considerations in determining the appropriate timing for Verizon's compliance with the statutory mandate of subsection 2, paragraph A.

We decide that Verizon shall reduce its intrastate access rates to the level of its interstate rates as of January 1, 2003 in two equal steps, on June 1, 2004 and May 31, 2005. We find that this schedule reasonably meets the various interests at stake in this decision. Local ratepayers may have an interest in the timing of Verizon's access rate reductions, as Verizon has asked that it recover the lost access revenues through an increase in local rates. We have not yet decided that issue.

Assuming, however, that we were to allow such recovery, the present time would be a poor time to increase Verizon's local rates. All Verizon customers face local rate increases that will take effect on December 15, 2003 because of additions to basic service calling areas (BSCAs). In addition, Verizon is simultaneously eliminating "rate groups," i.e., a local exchange service pricing structure under which customers who may call a greater number of lines on a toll-free basis pay a higher price than customers who may call smaller numbers of lines. Verizon will eliminate rate groups on a revenue-neutral basis so that, based on that effect alone, rates for larger rate groups will decrease and those for smaller rate groups will increase. Because of the BSCA expansions, however, all Verizon customers will face some net increase in rates. The greatest increase is $3.02 for residential customers who presently are in Rate Group A. As Verizon pointed out, its customers have also faced increases totaling $3.50 in 1998 and 1999 and a single increase of $1.78 in June 2001.

The other major interest is that of interexchange carriers, who of course prefer an immediate full reduction in access rates, as such a reduction will reduce their cost of providing intrastate service in Maine. While we are sympathetic to those carriers who, by virtue of national (rather than state-specific) pricing, will suffer some continuing "loss" due to the temporarily higher access rates, we believe that both the short delay, and the currently already low level of intrastate access rates, make any burden on the intrastate toll carriers minimal. The Legislature is clearly seeking a balance among the burdens imposed upon the local exchange carriers, customers who make few toll calls (and who thus are unlikely to "recoup" the increases in their basic rates through toll savings) and interexchange carriers. Verizon has already reduced access charges by more than $30 million per year since 1999; delaying a further reduction of $4.7 million for less than two years seems a minor burden to those who must pay.

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[4] As noted in Part II, MCI also argued that Verizon did not submit a plan at all. We do not view this argument as substantive. A proposal to reduce access rates on the last possible date is clearly a "plan," even if not to MCI's liking. In any event, MCI's objection has no relevance to the merits of Verizon's proposal.

V. OPPORTUNITY TO COMMENT ON WHETHER VERIZON SHALL BE PERMITTED TO INCREASE LOCAL RATES

We do not decide in this Order whether to permit Verizon to recover its future access revenue losses from retail ratepayers through an increase in local rates. Verizon's comments appear to assume that we will order such an increase. Verizon presented virtually no argument in support of that assumption.

The order issued in the AFOR case on June 25, 2001 (vacated by the Law Court for other reasons) discussed "whether and how Verizon should be allowed to recover for further access rate reductions (approximately $2-3 million) that Verizon will have to make in May of 2003." We stated: "We will not decide at this time whether these access rate reductions, which are considerably smaller than the 2001 reductions, should constitute an exogenous change and should require an increase to basic rates. Like the 2001 reductions, they are required by law, but their size may raise questions about whether they should be considered exogenous and subject to a pass-through in rates." *Maine Public Utilities Commission, Investigation into Verizon Maine's Alternative Form of Regulation*, Order (June 25, 2001) at 17-18.

In 1999 and 2001, Verizon reduced its intrastate access rates to comply with the requirements of the former Subsection 2 of Section 7101-B, which required parity between the intrastate and interstate access rates of all LECS. In each instance, we permitted Verizon to increase its basic exchange rates in order to offset at least part of the revenue loss caused by the access reductions. We considered the amount of the decreases to constitute an "exogenous change" as that term is defined in Verizon's AFOR. In this case, the access reduction (claimed by Verizon in its comments to be $4.7 million) is substantially smaller than the revenue effects from the past access rate decreases. (The 2001 decrease was $13.5 million.) We did, however, find that Verizon's costs ($3.8 million in expenses and annualized additional investment) for the 1998 ice storm were exogenous expenses.

Parties having a legal interest in this issue may file further comments concerning whether the required access reductions in May of 2004 and 2005 constitute an exogenous change.[5] Comments will be due on January 9, 2004.

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[5] In the first round of comments, AT&T presented argument on whether Verizon's local rates should be increased. AT&T, as an access customer, plainly has standing on the question of access rate reductions. Its standing on the issue of whether Verizon should increase local rates is not clear. *See Central Maine Power Company v. Public Utilities Commission*, 382 A.2d 302, 311-314 (Me. 1978) (Maine Oil Dealers Association, as a competitor of CMP, did not have standing to participate in a rate proceeding).

Accordingly, we

O R D E R

1. That Verizon Maine shall reduce its intrastate access rates to the level of its interstate access rates that were in effect on January 1, 2003 in two equal steps on June 1, 2004 and May 31, 2005, and

2. That on or before January 9, 2004, parties with a legal interest in the issue may comment on whether Verizon should be permitted to increase its rates for local exchange service to compensate for access revenue losses. Parties who comment shall include argument concerning whether the amount of Verizon's expected access revenue loss is an exogenous change as defined by the alternative form of regulation (AFOR) for Verizon.

Dated at Augusta, Maine, this 2nd day of December, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.